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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

Nos. 439-440

UNIVERSAL OIL PRODUCTS COMPANY,
Petitioner,

v.

ROOT REFINING COMPANY,
Defendant,

and

WILLIAM WHITMAN COMPANY, INC.
Intervenor-Respondent.

PETITION FOR REHEARING

RALPH S. HARRIS,
Attorney for Petitioner.

JOHN R. MCCULLOUGH,
ADAM M. BYRD,
LEO L. LASKOFF,
H. ALLEN LOCHNER,
Of Counsel.

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PETITION FOR REHEARING

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Petitioner, Universal Oil Products Company, prays this Court for a rehearing pursuant to Rule 33, Subdivision 2, of this Court. The petition will be confined to what are believed to be substantial grounds available to petitioner although not previously presented.

On December 28, 1946, William Whitman Company, Inc. commenced suit against petitioner in the United States District Court for the District of Delaware alleging, *inter alia,* (a) that a certain license agreement entered into be-

tween it and petitioner in April 1937 had been induced by the fraudulent representation by petitioner that the judgments of affirmance rendered by the Court of Appeals for the Third Circuit on June 26, 1935, in favor of petitioner and against Root Refining Company were honestly procured, or (b) that said license agreement was entered into between William Whitman Company, Inc. and petitioner upon a mutual mistake of fact.

In June, 1947, the Court of Appeals for the Third Circuit set aside its 1944 order vacating the *Root* judgments for fraud and required petitioner in spite of the absence of "parties" to show cause why the *Root* judgments of affirmance should not be set aside for fraud.

On December 30, 1947, William Whitman Company, Inc. moved the Court of Appeals for the Third Circuit for leave to intervene in the proceedings at bar with respect to the charge that the judgments of affirmance in the *Root* case had been procured by fraud.

These proceedings, at the time of the motion for intervention, were entirely without parties in the constitutional sense. The original party defendant, Root Refining Company, had settled its case with petitioner in 1939 and had reaffirmed and implemented that settlement in 1944 (328 U. S. 575, 577). Certain attorneys who had appeared ***amici curiae*** in the earlier phases of the proceedings (*ibid.*) had withdrawn.

The United States of America had filed an appearance through the Department of Justice as *Amicus Curiae*.

It was in this posture that hearings were had early in 1948 by the Court of Appeals for the Third Circuit, as specially constituted, upon the petition of William Whitman Company, Inc. for leave to intervene as aforesaid.

In opposition to Whitman's motion, petitioner urged that, in the absence of parties, there was no case or controversy before the court in the constitutional sense (see our main brief upon petition for *certiorari* filed December 1, 1948, pp. 56-62) and hence no justiciable controversy with respect to which Whitman might properly be allowed to intervene.

In taking this position petitioner in no wise denied the inherent right of the Court of Appeals to unearth a fraud committed upon it and to unearth it effectively (328 U. S. 575, 580). Petitioner maintained, however, that it was neither lawful nor just that William Whitman Company, Inc., which was engaged in private litigation with petitioner in a plenary action previously commenced by Whitman in Delaware, should be associated with the instant proceedings in the Court of Appeals. To hold otherwise, petitioner urged, would result in a judgment *in vacuo* in a proceeding designed exclusively to vindicate the honor of the Court of Appeals.

The Court of Appeals overruled petitioner's objections and granted the intervention of Whitman on April 6, 1948.

I.

We do not at this time reargue the extent to which the Court of Appeals had jurisdiction, in the interest of the honor and integrity of that court, to investigate whether or not the court's judgments were tainted with fraud and to punish officers of the court and litigants by appropriate action.

That the court may have had such jurisdiction, however, is very far, we respectfully submit, from justifying the proceedings as a constitutional case or controversy *as*

far as the private litigation between petitioner and Whitman in the pending Delaware action is concerned.

It is our contention that the judgment of the Court of Appeals is not *res adjudicata* as between Whitman and petitioner, although the court below appears specifically to have so held (169 F. 2d 514, 525). We respectfully urge that the Court of Appeals be reversed in this particular.

II.

Moreover, it is maintained by *Amicus Curiae* and by Whitman that this Court, in denying petitions for writs of prohibition, mandamus and *certiorari* on November 10, 1947 (332 U. S. 813), necessarily determined that a case or controversy in the constitutional sense existed in the present proceeding. This Court has consistently held that the denials of such petitions are without legal significance with respect to the merits of the matters sought to be presented to the court. *Ex Parte Abernathy,* 320 U. S. 219; *Atlantic Coast Line R. Co.* v. *Powe,* 283 U. S. 401, 403-4; *United States* v. *Carver,* 260 U. S. 482, 490; *Hamilton Shoe Co.* v. *Wolf Brothers,* 240 U. S. 251, 258; *Accord: House* v. *Mayo,* 324 U. S. 42, 47-8.

The erroneous assumption that the denial of such petitions necessarily implied an adjudication upon the points sought to be reviewed has been embodied and perpetuated in the opinion of the court below in these proceedings. For example, the court stated, 169 F. 2d 514 at 523:

> "This interpretation [that there was a case or controversy below] of the Supreme Court's position [in 328 U. S. 575] is in harmony with its subsequent rejection of Universal's petition for writs of pro-

hibition and mandamus, directed to this court, wherein Universal again advanced the contention that this court had acted in excess of its jurisdiction."

It is humbly submitted to this Court that it should grant this petition in order to reverse the lower court in this respect and thus prevent, in litigation involving petitioner and others, other courts from applying the doctrine of *stare decisis* in respect of the lower court's construction of this Court's denial of previous petitions. Unless this Court shall do so, then in addition to the error already perpetrated it will be claimed, and other courts may hold, that this Court's recent denial (U. S. , decided January 17, 1949) of the petition for writs of *certiorari* is similarly decisive of the contested questions in the proceedings below.

For all the foregoing reasons petitioner respectfully prays that this Court grant this petition for rehearing and issue its writs of *certiorari* for the purpose of determining the questions herewith submitted.

Respectfully submitted,

UNIVERSAL OIL PRODUCTS COMPANY,
Petitioner,

By RALPH S. HARRIS,
Attorney for Petitioner.

JOHN R. MCCULLOUGH,
ADAM M. BYRD,
LEO L. LASKOFF,
H. ALLEN LOCHNER,
Of Counsel.

January 26, 1949.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay and that the petition is restricted to the grounds above specified.

RALPH S. HARRIS